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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 CHRISTINA JOHNSTON,) Case No. 08 cv 0568-BTM(NLS)
10 Plaintiff,)
11 v.)
12 UNITED STATES OF AMERICA,) **ANSWER TO COMPLAINT**
13 et al.,)
14 Defendants.)
15

16 COMES NOW Defendant, the United States of America, by and through its attorneys,
17 Karen P. Hewitt, United States Attorney, and Thomas B. Reeve, Jr., Assistant U.S. Attorney,
18 and in answer to Plaintiff's complaint states as follows:

19 1. Answering Paragraph 1 of the Complaint, Defendant alleges that the allegations
20 contained therein are legal conclusions solely within the purview of the court and for its
21 determination, and no answer is therefore required. To the extent an answer is required, said
22 allegations are denied.

23 2. Answering Paragraph 2 of the Complaint, Defendant admits it conducts
24 governmental activities within the Southern District. Except as specifically admitted, Defendant
25 denies generally and specifically, each, all and every allegation.

26 3. Answering Paragraph 3 of the Complaint, Defendant alleges that it is without
27 knowledge or information sufficient to form a belief as to the truth of the allegations therein
28 contained, and based thereon, denies generally and specifically each, all and every allegation

1 contained therein.

2 4. Answering Paragraph 4 of the Complaint, Defendant alleges that the allegations
3 contained therein are legal conclusions solely within the purview of the court and for its
4 determination, and no answer is therefore required. To the extent an answer is required, said
5 allegations are denied.

6 5. Answering Paragraph 5 of the Complaint, Defendant alleges that it is without
7 knowledge or information sufficient to form a belief as to the truth of the allegations therein
8 contained, and based thereon, denies generally and specifically each, all and every allegation
9 contained therein.

10 6. Answering Paragraph 6 of the Complaint, Defendant alleges that it is without
11 knowledge or information sufficient to form a belief as to the truth of the allegations therein
12 contained, and based thereon, denies generally and specifically each, all and every allegation
13 contained therein.

14 DEFENSES, AFFIRMATIVE DEFENSES, AND OTHER MATTERS

15 1. The Plaintiff is limited to recovery, if any, of the amount claimed administratively
16 in accordance with 28 U.S.C. § 2675(b).

17 2. Defendant United States cannot be held strictly liable under the FTCA. Plaintiff
18 must prove negligence by a federal employee.

19 3. If Plaintiff failed to utilize a seatbelt, then Plaintiff is comparatively negligent.

20 4. Defendant is entitled to an offset against damages, if any, for all monies paid to
21 Plaintiff by the United States as a result of Plaintiff's injuries.

22 5. All future damages, if any, must be reduced to present value.

23 6. Income taxes must be deducted from all alleged past and future lost earnings,
24 if any.

25 7. Proposition 51, California Civil Code § 1431.2, et seq. provides that "each
26 defendant shall be liable only for the amount of non-economic damages allocated to the
27 defendant in direct proportion to that defendant's percentage of fault. . . ." It further provides
28 for apportionment of non-economic damages at the trial level.

1 WHEREFORE, Defendant prays that Plaintiff take nothing by reason of her suit herein,
2 that judgment be rendered in favor of said Defendant, for costs of suit herein incurred, and for
3 such other and further relief as this Court may deem proper.

4 May 30, 2008

5 Respectfully submitted,

6 KAREN P. HEWITT
7 United States Attorney

8 /s/ **Thomas B. Reeve, Jr.**

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